

Information Rights Committee Minutes – 19 April 2011

Members and other attendees present

David Smith	Deputy Commissioner, Director of Data Protection (Chair)
Paul Arnold	Head of Customer Contact
Jonathan Bamford	Head of Strategic Liaison
Simon Ebbitt	Internal Compliance Manager
Simon Entwisle	Director of Operations
Andrew Laing	Head of Complaint Resolution
Ken Macdonald	Assistant Commissioner – Scotland and Northern Ireland
Sally-Anne Poole	Acting Head of Enforcement
Simon Rice	Principal Policy Advisor- Technology
Greer Schick	Online and Internal Communications Manager
Graham Smith	Deputy Commissioner, Director of Freedom of Information
Louise Webb	Head of Good Practice
Faye Spencer	Group Manager, Business, finance, health & education, Complaints Resolution (Item 4)
Dawn Monaghan	Public Service Group Manager, Strategic Liaison (Item 4)
Meagan Mirza	Public Security Group Manager, Strategic Liaison (Item 4)
Jonathan Kay	Corporate Governance Officer (Secretariat)

1. Introductions and apologies

- 1.1. There were apologies from Steve Wood, Anne Jones, Susan Fox and Lesley Bett.
- 1.2. The Information Rights Committee (IRC) welcomed Simon Ebbitt and Greer Schick attending on behalf of Lesley Bett and Susan Fox.

2. Minutes, action points and matters arising from the last meeting

- 2.1. The Information Rights Committee (IRC) examined the minutes of the last meeting, and agreed them.
- 2.2. IRC considered the outstanding action points and matters arising from previous meetings and agreed these were now closed.

Action point 1 – Secretariat to arrange for the minutes to be added to the ICO website and staff to be advised.

3. Key information rights developments

- 3.1. David Smith invited members to provide a brief update on key developments within information rights.

Customer Contact

- 3.2. Work is ongoing to measure customer journeys and outcomes to help target advice on the website and helpline.

Complaint Resolution

- 3.3. Work is ongoing concerning FOI casework processes. A project to make the lines to take database available on the website should be complete by mid May.

Enforcement

- 3.4. There had been 603 self reported breaches in the last year, with 60 in March alone. 186 were disclosed in error. Four monetary penalties had been issued, totalling £310,000. Eight potential criminal cases are under consideration.

Good Practice

- 3.5. The audit programme for the next year is being put in place, with 37 audits arranged up to Christmas, and the pilot of a self-assessment audit package with a volunteer organisation.

Regional Offices

- 3.6. Ken Macdonald noted that there was less activity than usual due to the pre-election period. Memoranda of understanding are being explored with other ombudsmen. A health sector data breach has come to light in Northern Ireland, and an issue in Scotland relating to the use of CCTV in schools.

- 3.7. IRC discussed memoranda of understanding and agreed that this should be subject to a more detailed discussion at a future meeting.

Internal Compliance

- 3.8. The consultation on the possible publication of the Register of data controllers has now closed, with more than 170 responses received. A report will be prepared for the Executive Team (ET).
- 3.9. The ICO should be compliant with the revised Privacy and Electronic Communications Regulations (PECR) before they come into force. Options are being agreed with Corporate Affairs.

PECR

- 3.10. IRC discussed preparation for the new PECR regulations. The PECR group has met and fed into advice to be published once the regulations are published. More detailed guidance will follow.
- 3.11. IRC heard that aspects of the draft regulations raised questions in relation to working with fellow-regulators. As the implementation is not phased, significant work will be needed by website operators to address the new 'consent to cookies' requirements, ICO will need to consider its approach to enforcement.

Strategic Liaison

- 3.12. The Commissioner will be attending the Home Affairs Committee to give evidence to their enquiry into phone hacking, and a written submission has been prepared.
- 3.13. The criminal record review continues and phase one is complete. This looked at the availability of old criminal records for CRB and other disclosures.

4. Priority Area update reports

- 4.1. IRC heard brief reports from the leaders of the Priority Area Groups. The groups had all held initial meetings, and were identifying specific concerns within their areas. It was agreed that the groups provided a useful forum, but that some areas needed narrowing down.
- 4.2. The Priority Area Groups would report every three months, with the priority areas themselves subject to an annual and a mid year review. These would take place in October and April.

- 4.3. The groups were being asked to look at broad priority areas and identify the 'big issues' within them. These might be complaints-driven, or anticipate issues 'over the horizon'. Casework would be a major but not the only indicator of priority, but the ultimate aim of the groups would be to reduce the risk to individuals' information rights and hence the number of cases or potential cases coming to the ICO.
- 4.4. The groups would look at how to pursue and develop the ICO's approach in these big issue areas, developing action plans and monitoring progress against them.
- 4.5. It was agreed that the Priority Area Groups should return to IRC with an action plan identifying major issues and planned actions with their priority areas.

Action Point 2 – Priority Area Groups to bring forward outlines of issues and action plans to the May or June IRC meetings.

Action Point 3 – Secretariat and Chair to revise the Draft Terms of reference for the Policy Area Groups in the light of this discussion.

5. ICO Technology Support Forum

- 5.1. Simon Rice introduced a proposal for a forum to act as a source of advice and expertise in technology-related issues.
- 5.2. A cross-office group would be formed to provide a coordinated reference point for technology-related issues, and to assess emerging technologies and related developments with a possible impact on information rights.
- 5.3. The group would coordinate with the proposed Technology Reference Panel. It would meet bi-monthly, chaired by the Principal Policy Adviser and with members drawn from ICO business areas.
- 5.4. A note of key points from the meeting will be reported to the IRC and made available to staff through the intranet.
- 5.5. IRC agreed the establishment of the forum and asked Simon Rice to take this forward, coordinating with other internal knowledge-sharing groups as necessary.

Action Point 4: Simon Rice to liaise with Steve Wood in setting up the Technology Support Forum.

6. Policy research update

- 6.1. Jonathan Bamford presented a proposal for a possible research project funded from the 2011/12 budget. This would commission external research on the embedding of information rights into the education system.
- 6.2. IRC had agreed this as a necessary area for research at a previous meeting. The committee heard that the project would synchronise with the current government led review of the national curriculum for England, and noted that there might be an opportunity for engagement with the Ministry of Justice and Cabinet Office.
- 6.3. IRC discussed the proposal and suggested improvements. IRC supported the proposal in principle, but noted that given the projected cost the project carried risk, and would take place against a changing background.
- 6.4. It was agreed that initially a scoping study should go forward involving some limited expenditure to inform the project. A two stage contract would be awarded with the scoping study as the first stage. The full project would be contingent on the results of that exercise. Opportunities for collaborative working with the MoJ and Cabinet Office will also be explored.

Action Point 5 - Jonathan Bamford to take the project forward, setting up a cross office group to develop an invitation to tender and to let and manage the project up to delivery of the scoping project.

7. Internal Audit Report

- 7.1. IRC reviewed the final report of the recent internal audit exercise on the 'Effectiveness of the ICO's Good Practice Function' following its discussion by the Executive Team (ET).
- 7.2. The report included a recommendation for the IRC to discuss arrangements in relation to audit opinions and the need for a disclaimer in audit reports.
- 7.3. IRC discussed the possibility of liability in relation to audit opinions and the need to issue them as part of the audit report. It was felt that issuing an opinion within the audit report allows for a clear outcome of the audit, which ET had also agreed in their discussion. In particular the responsibility of an audited organisation, where a high assurance or 'green'

opinion had been given, subsequently breaching the Act was discussed. It was agreed that this was possible, that it would not necessarily mean the audit was deficient and that the principal risk to the ICO was reputational rather than legal liability

7.4. IRC noted that the ICO accepted this potential risk and took it on board. The educational benefits of a clear audit opinion were felt to outweigh this potential risk and current mitigations were identified, including ensuring audit work is of a high quality. However, the use of a 'disclaimer' within ICO audit reports in the future was agreed, in order to make clear to organisations and third parties the limited reliance that can be placed on the findings of the report. A statement is also being developed in conjunction with Press Office in case of such a situation arising.

7.5. IRC discussed whether using a 'high assurance' audit opinion is appropriate, but agreed that ICO audits should involve recognition of good practice where appropriate.

8. Consultations update

8.1. IRC examined the consultations report and noted the volume of consultation activity underway, including evidence to Committees.

9. Any other urgent business

9.1. There was no other urgent business.

10. Next Meeting

10.1. **17 May 2011, 10.30am, Room M5&6** Papers to secretariat by 12.00pm Wednesday 11 May.